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The YALE LAW JOURNAL wishes to announce the election of the following men to its editorial board:

From the class of 1906, H. F. Hamlin, H. V. Jones, F. B. Winthrop; from the class of 1907, J. M. Forsyth, F. P. McEvoy, G. S. Munson, G. E. Parks, T. D. Thacher, G. S. Van Schaick.

LEGISLATIVE POWER OVER THE CONTRACTS OF A MUNICIPAL CORPORATION.

The case of *Graham et al. v. Folsom et al.*, 26 Sup. Ct. Rep. 245, recently decided, presents an interesting question. Is the exercise by a state of the right to alter or destroy its municipal corporations effectual to impair the obligation of municipal contracts? The United States Supreme Court in the above case held that it was ineffectual.

At common law a corporation, either private or municipal, upon dissolution became civilly dead. The effect of this was that land belonging to the corporation reverted to the grantor and that debts owing to and by the corporation were extinguished. The common law rule that the debts of a private corporation were extinguished upon its dissolution, has been so far modified that a court of equity will now take hold of its property and administer it for the benefit of its creditors and stockholders. The obligation of contract survives dissolution, and the contract may be

enforced by a court of equity, so far as to subject for their satisfaction any property held by it at the time. In equity its property constitutes a trust fund for the payment of its debts; and if a municipal corporation upon its dissolution has property, a court of equity will take possession of it for the benefit of the creditors. *Broughton v. Pensacola,* 93 U. S. 266, 268.

The right of the state to repeal the charter of one of its municipalities cannot be questioned. But while the charter may be repealed at the pleasure of the legislature, the contracts of the municipal corporation made while it was still in existence may still be enforced against the property held by it at the time of the appeal. *Meriwether v. Garrett,* 102 U. S. 472. Judge Dillon in his excellent work lays down the principle that legislative acts respecting the public powers of municipal corporations, not being contracts, may be changed at pleasure when the constitutional rights of creditors and others are not invaded. *Dillon on Municipal Corporations,* (4th ed.) 105.

It is not within the power of a legislature by a repeal of a charter of a municipal corporation to invade the rights of its creditors and cancel its indebtedness. Such legislation impairs the obligation of contract and is unconstitutional and void. *Morris v. State,* 62 Texas 728. The obligation to perform its contracts rests upon a municipal corporation as well as upon a natural person, and a legislative act which deprives a corporation of its charter cannot be construed as relieving it from liabilities already incurred. This is a matter of public policy, for a contrary rule would place persons contracting with municipal corporations so completely at the mercy of the legislature that it would be hard to find anyone willing to contract with them. In the case of *Smith v. Inge,* 80 Texas 285, the court said that the whole legislation abolishing the charter and dissolving the municipal corporation of Mobile were enactments which were unconstitutional and void because they impaired the obligation of contracts, by destroying all remedies of the creditors of the city for the enforcement of their demands.

Municipal corporations cannot extinguish their debts by changing their name or organizing under a new charter. A debt once contracted by a municipal corporation will survive against whatever corporate entity is created to take its place and exercise powers over practically the same people and territory. An action at law may be maintained against the new corporation as successor of the former on a judgment recovered against the former before dissolution. *Hill v. Kahoka,* 35 Fed. 32. The City of Mobile being greatly indebted, the legislature passed an act repealing its

charter and abolishing the city. On the same day an act was passed incorporating the Port of Mobile which included nearly all of the old city within its limits. In an action brought by a creditor of the old city two questions were raised. 1. Whether a preceding creditor was entitled to a judgment against the Port of Mobile on an obligation of the City of Mobile? 2. Whether the power of taxation existing when the debt was created by the City of Mobile could be enforced in favor of the creditor? Both questions were decided in favor of the creditor and the court issued a mandamus against the Port to compel payment. *Mobile v. Watson,* 116 U. S. 289. In *Amy v. Selma,* 77 Ala. 103, it was held that a new corporation named Selma created to replace one named City of Selma. which had been dissolved, was its successor and liable for its debts. See also *Meyer v. Porter,* 65 Cal. 67. A statute extinguishing one corporation and throwing its obligations upon another raises an implied promise on the part of the successor to pay the same. *Little v. Union Township Committee,* 40 N. J. L. 397.

The power of taxation by a municipal corporation and its limitations at the date of contract become part of the contract, and continue in favor of a creditor under such contract without regard to subsequent reductions of the limitation of the power. *Morris v. State,* 62 Texas 728; *U. S. v. Port of Mobile,* 12 Fed. 768. Where there is a mode provided by statute for levying taxes to pay a debt, it is a part of the obligation, and any subsequent act which affects rights under the contract is void. *Siebert v. Lewis,* 122 U. S. 284. Where a municipal corporation entered into a contract while a law giving a remedy by compulsory taxation was in force, the repeal of the law and the adoption of a new constitution forbidding the levy of a tax in such case were held to be unconstitutional and void as impairing the obligation of contract. *Sawyer v. Concordia,* 12 Fed. 754. Although such legislation has been plentiful the courts have been diligent in protecting the interests of the creditors.

UNION REFRIGERATOR TRANSIT CO V. KENTUCKY. 199 U. S. 194.

This case came up on an attempt by the state of Kentucky to tax the corporation, which does business under a Kentucky charter, on 2000 of its cars, which were all the cars owned and operated by the corporation in various states of the Union and of which less than a hundred were operated in the state of Kentucky. The plaintiff's contention is that only those cars operated in the state of Kentucky, and therefore under its protection, should be taxed and not those cars employed in other states in the prosecution of its business and therefore permanently located there.